

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos. 2424 of 2000, 2729 of  
2000 and 2734 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ALPA M MODI

Versus

STATE OF GUJARAT  
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Appearance:

MR BG JANI for Petitioner in all these three matters  
MR PK SHUKLA, ld.AGP for Respondents in all these  
three matters.  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/05/2000

COMMON ORAL JUDGEMENT

In Special Civil Application No.2424 of 2000, the  
vehicle in question is a mobile Crane No.MMH-3839 which  
is registered in the State of Maharashtra. The case of

the petitioner is that this Crane was brought into the State of Gujarat on 4th March 2000, the same was seized and detained on 6th March 2000 along with the papers while it was to be put to work on contract on 9th March 2000 in the State of Gujarat. Learned Counsel for the petitioner has submitted that after writing the letters dated 8th February 2000 to the Director of the Transport, State of Gujarat and the Transport Secretary, the Crane was brought over, but the same was seized and detained near Dhaval Cinema, Ranoli, Baroda, under Sec. 12(B) of the Bombay Motor Vehicles Tax Act, 1958. Learned Counsel for the petitioner has placed strong reliance on the notification dated 14th April 1959 of the Govt. of Bombay a copy of which has been placed on record as Annexure.H and has submitted that the vehicle in question, i.e. Crane which is a non-transport vehicle is exempted from paying the tax in the State of Gujarat because the tax has already been paid in respect of this vehicle in the State of Maharashtra. It is submitted that therefore, the authorities of the Transport Department in the State of Gujarat could not ask for the tax for the period of six months and the seizure and the detaining of the vehicle is bad. Learned Counsel for the petitioner has also submitted that the applicability of the notification issued by the Govt. of Bombay on 14th April 1959 to the State of Gujarat has also been admitted in the reply filed by the respondents.

2. However, during the course of arguments, learned Counsel for the petitioner has brought to the notice of this Court a letter dated 31st March 2000 sent by the Deputy Director of Transport, State of Gujarat to the Regional Transport Officers in the matter of Special Civil Application No.1308 of 2000, i.e. Crane Owners Association and ors. v. Union of India, State of Gujarat and ors. The contents of this letter shows that Special Civil Application No.1308 of 2000 has been filed wherein the Court has passed an interim order and according to this interim order, subject to the undertaking being given by the petitioners therein, no coercive steps were to be taken for recovery of the tax at the new rates that is applicable from 31st July 1995 but the petitioners shall be liable to pay the tax at the new rates within 15 days in case the petitions are dismissed.

3. Learned Asst.Govt. Pleader has also produced a notification issued by the Home Department of the Govt. of Gujarat dated 4th April 2000 by which the notification which had been issued by the Govt. of Bombay on 14th April 1959 on which the reliance has been placed by

learned Counsel for the petitioner has been superseded and non-transport vehicle like the Crane which is in question in this petition, no more remains exempted even if it has paid the tax for the period in question in other State or the Union Territory. Therefore, it is very clear that so far as the period on and from 4th April 2000 is concerned, the earlier notification which had been issued by the Govt. of Bombay on 14th April 1959 is no more applicable.

4. Learned Counsel for the petitioner has submitted that the whole purpose for which the Crane in question was to be used stands frustrated as the petitioner wanted to put the Crane to use for the purpose of the contract which was to commence on 9th March 2000, it could not be put to use because of the fact that the same had been seized and detained on 6th March 2000 itself. The petitioner now wants to take back this vehicle to State of Maharashtra and submits that the petitioner is ready and willing to pay the due amount of tax at the old rate in terms of the order passed by this Court in Special Civil Application No. 1308 of 2000 in which the present petitioner is also one of the petitioners.

5. It is, therefore, ordered that the petitioner of this Special Civil Application No. 2424 of 2000 shall pay the due amount of tax to be determined by the concerned authorities in terms of the order passed in Special Civil Application No.1308 of 2000 in accordance with the Rules and on such amount being deposited by the petitioner with the authorities, the Crane in question, i.e. MMH-3839 shall be released forthwith along with the documents which have been seized. In case the Spl.Civil Application No.1308 of 2000 is dismissed, all legal consequences shall follow in terms of the order which is passed in Spl. Civil Application No.1308 of 2000. This Special Civil Application is, therefore, allowed partly to the aforesaid extent and the Rule is made absolute.

6. In Special Civil Applications Nos.2729 of 2000 and 2734 of 2000, the vehicles in question are mobile Cranes with Registration Nos.MRJ-8714 and MH-01-N-1691 respectively. These vehicles were detained on 29th January 2000. These vehicles were brought in the State of Gujarat in February 1999 and April 1999 respectively and both these vehicles were detained on 29th January 2000. It is submitted that the petitioners of these two petitions are also two of the petitioners in Special Civil Application No.1308 of 2000 about which the reference has been made hereinabove and that these two petitioners have also given undertaking in terms of the

order passed by this Court in terms of the interim order passed in Special Civil Application no.1308 of 2000. Learned Counsel for the petitioners has submitted that both these petitioners are also ready to pay the due amount of tax at the old rate in terms of the order passed in Special Civil Application No.1308 of 2000 along with the amount of penalty from February 1999 and April 1999 respectively and that the petitioners will also be bound to pay any amount of tax at the new rate within 15 days in case Special Civil Application No.1308 of 2000 is dismissed as per the undertaking given therein.

7. It is, therefore, ordered that the Cranes in question, bearing Regn. Nos. MRJ-8714 and MH-01-N-1691 concerned in these two petitions respectively shall also be released forthwith by the authorities of the Transport Department in case the petitioners herein pay the respective due amount as stated above in para 6 along with the amount of penalty from February 1999 and April 1999. In case the Spl.Civil Appolication No.1308 of 2000 is dismissed, all legal consequences shall follow in terms of the order which is passed in Spl.Civil Application No.1308 of 2000. Both these Special Civil Applications are also partly allowed to the above extent and the Rule is made absolute in the same terms. No order as to costs.

Direct service is permitted.

(M.R. Calla, J.)

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